

7 WEST 21 LI LLC,

SOUTHERN DISTRICT OF NEW YORK

7 WEST 21 LI LLC,

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Plaintiff,

-V-

CLEMENT MOSERRI,

Defendant.

21 Civ. 5621 (JPC)

ORDER

JOHN P. CRONAN, United States District Judge:

JOHN P. CRONAN, United States District Judge:

On July 7, 2021, the Honorable Laura Taylor Swain, Chief United States District Judge, ordered Defendant to file a declaration that complies with the requirements for removal of a state action to federal court, as set forth at 28 U.S.C. § 1446(a). Dkt. 4. Citing section 1446(a), Chief Judge Swain explained:

Defendant’s notice of removal does not comply with section 1446(a). Defendant did not file “a short and plain statement of the grounds for removal” or submit “cop[ies] of all process, pleadings, and orders” that were served upon him in the state court. Defendant simply asserts, without any factual enhancement, that the holdover proceeding underlying this notice of removal is a duplicate of the one underlying [7 *West 21 LI LLC v. Mosseri*, No. 20 Civ. 279 (JPC) (S.D.N.Y.)].

Id. at 2. Chief Judge Swain further warned that if Defendant failed to comply with her Order by August 7, 2021, without showing good cause to excuse such failure, the case would be remanded to the state court pursuant to 28 U.S.C. § 1447(c). *Id.* at 3. On July 19, 2021, this case was assigned to the undersigned.

Instead of complying with Chief Judge Swain's July 7, 2021 Order, Defendant filed a motion to dismiss on July 14, 2021. Dkt. 5. Two dates after that, on July 16, 2021, Defendant filed a Notice of Appeal, purporting to appeal the July 7, 2021 Order to the United States Court of Appeals for the Second Circuit. Dkt. 9. The Second Circuit dismissed Defendant's appeal on

January 31, 2022. Dkt. 10.

Defendant's motion to dismiss, Dkt. 5, is denied without prejudice because Defendant has failed to comply with the July 7, 2021 Order and has not established this Court's subject matter jurisdiction. *See American Standard, Inc. v. Oakfabco, Inc.*, 498 F. Supp. 2d 711, 715 (S.D.N.Y. 2007) ("If removal was inappropriate, the court must remand for lack of subject matter jurisdiction, notwithstanding the pendency of other motions."). Moreover, if Defendant does not comply with the July 7, 2021 Order by filing a declaration that "contain[s] a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon [Defendant] in" the underlying state court action, 28 U.S.C. § 1446(a), within 30 days, *i.e.*, by March 3, 2022, this case will be remanded to the state court without further notice.

The Clerk of Court is respectfully directed to close the motion pending at Docket Number 5. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue). The Clerk of Court is respectfully directed to mail this Order, and the Order at Docket Number 4, to the *pro se* Defendant.

SO ORDERED.

Dated: February 1, 2022
New York, New York



JOHN P. CRONAN
United States District Judge